

Department of the Army, DoD

§516.4

APPENDIX E TO PART 516—DEPARTMENT OF DEFENSE DIRECTIVE 5505.5, IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT.

APPENDIX F TO PART 516—GLOSSARY.

APPENDIX G TO PART 516—FIGURES.

AUTHORITY: 5 U.S.C. 552; 10 U.S.C. 218, 1037, 1089, 1552, 1553, 2036; 18 U.S.C. 219, 3401; 28 U.S.C. 50, 513, 515, 543; 31 U.S.C. 3729 and 41 U.S.C. 51; 42 U.S.C. 290, 2651; 43 U.S.C. 666

SOURCE: 59 FR 38236, July 27, 1994, unless otherwise noted.

Subpart A—General

§516.1 Purpose.

(a) This part prescribes policies and procedures for the following:

(1) Defensive and affirmative litigation in Federal and state civilian courts where the Army or DOD has an interest in the matter.

(2) Proceedings before Federal or state administrative bodies, such as utility rate commissions.

(3) Release of official information and testimony by DA personnel with regard to litigation.

(4) Remedies for procurement fraud and corruption.

(5) Environmental civil litigation and administrative proceedings.

(6) Proceedings before the Office of Special Counsel.

(b) This regulation does not apply to DA or DOD proceedings such as court-martial or administrative boards.

§516.2 References.

Applicable publications and forms are listed in appendix A to this part.

§516.3 Explanation of abbreviations and terms.

(a) The Glossary contains explanations of abbreviations and terms.

(b) The masculine gender has been used throughout this regulation for simplicity and consistency. Any reference to the masculine gender is intended to include women.

§516.4 Responsibilities.

(a) United States Department of Justice (DOJ). DOJ will defend litigation in domestic and foreign courts, against the United States, its agencies and instrumentalities, and employees whose official conduct is involved. The var-

ious U.S. Attorney Offices, under the oversight of the Attorney General, will conduct much of the representation.

(b) The Judge Advocate General (TJAG). Subject to the ultimate control of litigation by DOJ (including the various U.S. Attorney Offices), and to the general oversight of litigation by the Army General Counsel, TJAG is responsible for litigation in which the Army has an interest except with respect to proceedings addressed in paragraph (i) of this section, only TJAG (or Chief, Litigation Division) will communicate to DOJ the army's position with regard to settlement of a case.

(c) Assistant Judge Advocate General For Civil Law and Litigation (AJAG-CL). Responsible to TJAG for litigation issues; supervises Chief, Litigation Division.

(d) Chief, Litigation Division. Reports to AJAG-CL and is responsible for the following:

(1) Supervising litigation in which the Army has an interest.

(2) Acting for TJAG and Secretary of the Army on litigation issues, including the authority to settle or compromise cases, subject to the supervision of TJAG and AJAG-CL.

(3) Delegating cases if appropriate.

(4) Serving as primary contact with DOJ on litigation.

(5) Accepting service of process for DA and for the Secretary of the Army in his official capacity. See 32 CFR §257.5).

(e) Special Assistant U.S. Attorneys (SAUSAs) and DOJ Special Attorneys. Army judge advocates and civilian attorneys, when appointed as SAUSAs under 28 U.S.C. 543, will represent the Army's interests in either criminal or civil matters in Federal court under the following circumstances:

(1) Felony and misdemeanor prosecutions in Federal court. Army attorneys, at the installation level, after being duly appointed (See AR 27-10), will prosecute cases, in which the Army has an interest, in Federal court. Army attorneys who prosecute criminal cases will not represent the United States in civil litigation without authorization from Chief, Litigation Division.

§516.4

32 CFR Ch. V (7-1-02 Edition)

(2) SAUSAs for civil litigation. By assignment of TJAG and upon the approval of the U.S. Attorney, Judge Advocates will serve within a U.S. Attorney's office to represent the government in litigation in which the Army or DOD has an interest. These Judge Advocates have the same general authority and responsibility as an Assistant U.S. Attorney.

(3) Special Attorneys assigned to DOJ. By assignment of TJAG and with the concurrence of the appropriate DOJ official, Judge Advocates will work as Special Attorneys for DOJ. Special Attorneys are authorized to represent the United States in civil litigation in which the Army or DOD has an interest.

(f) Attorneys at Army activities or commands. SJAs or legal advisers, or attorneys assigned to them, will represent the United States in litigation only if authorized by this regulation or delegated authority in individual cases by the Chief, Litigation Division.

(g) Commander, U.S. Army Claims Service (USARCS). The Commander, USARCS, and USARCS attorneys, subject to AR 27-20, Chapter 4, will maintain direct liaison with DOJ in regard to administrative settlement of claims under the Federal Tort Claims Act.

(h) Chief, Contract Law Division, OTJAG. The Chief, Contract Law Division, attorneys assigned to the Contract Law Division, and other attorneys designated by the Chief, Contract Law Division, in litigation involving taxation, will represent DA in negotiation, administrative proceedings, and litigation, and maintain liaison with DOJ and other governmental authorities.

(i) Legal Representatives of the Chief of Engineers. The Office of Chief Counsel, attorneys assigned thereto, and other attorneys designated by the Chief Counsel will maintain direct liaison with DOJ and represent DA in litigation and administrative proceedings arising from the navigation, civil works, Clean Water Act 404 permit authority, environmental response activities, and real property functions of the U.S. Army Corps of Engineers.

(j) Chief Trial Attorney, Contract Appeals Division, USALSA. The Chief Trial Attorney, attorneys assigned to

the Contract Appeals Division, and attorneys designated by the Chief Trial Attorney will represent the government before the Armed Services Board of Contract Appeals and the General Services Board of Contract Appeals. They will maintain direct liaison with DOJ concerning appeals from ASBCA and GSBICA decisions. The Chief Trial Attorney has designated COE attorneys to act as trial attorneys in connection with COE contract appeals.

(k) Chief, Regulatory Law Office, USALSA. The Chief, Regulatory Law Office, attorneys assigned to the Regulatory Law Office, and other attorneys designated by the Chief, will represent DA consumer interests in regulatory matters before state and Federal administrative agencies and commissions, including but not limited to proceedings involving rates and conditions for the purchase of services for communications (except long-distance telephone), transportation, and utilities (gas, electric, water and sewer). They will maintain direct liaison with DOJ for communications, transportation, and utilities litigation.

(l) Chief, Intellectual Property Law Division, USALSA. The Chief, Intellectual Property Law Division, and the attorneys assigned thereto will represent DA in matters pertaining to patents, copyrights, and trademarks. They will maintain direct liaison with DOJ concerning intellectual property issues.

(m) Chief, Labor and Employment Law Office, OTJAG. The Chief, Labor and Employment Law Office, attorneys assigned thereto, and attorneys identified as labor counselors will represent DA in matters pertaining to labor relations, civilian personnel, and Federal labor standards enforcement before the following: Federal Labor Relations Authority; Merit Systems Protection Board; Equal Employment Opportunity Commission; Department of Labor; National Labor Relations Board; and, state workmen's compensation commissions. In the event any individual mentioned in this subparagraph intends to make a recommendation to DOJ concerning an appeal of any case to a U.S. Court of Appeals, such recommendation will first be coordinated with Litigation Division.

Department of the Army, DoD

§516.6

(n) Chief, Procurement Fraud Division, USALSA. The Chief, Procurement Fraud Division, attorneys assigned thereto, and other attorneys designated by the Chief will represent DA in all procurement fraud and corruption matters before the Army suspension and debarment authority and before any civil fraud recovery administrative body. They will maintain liaison and coordinate remedies with DOJ and other agencies in matters of procurement fraud and corruption.

(o) Chief, Environmental Law Division, USALSA. The Chief, Environmental Law Division, attorneys assigned thereto, and other attorneys designated by the Chief, ELD, will maintain direct liaison with DOJ and represent DA in all environmental and natural resources civil litigation and administrative proceedings involving missions and functions of DA, its major and subordinate commands, installations presently or previously managed by DA, and other sites or issues in which DA has a substantial interest, except as otherwise specifically provided in this part.

(p) Chief, Criminal Law Division, OTJAG. The Chief, Criminal Law Division, will have general oversight of felony and magistrate court prosecutions conducted by Army lawyers acting as Special Assistant U.S. Attorneys. (See subpart G of this part). The Chief will coordinate with DOJ and other governmental agencies concerning the overall conduct of these prosecutions.

[59 FR 38236, July 27, 1994; 59 FR 45974, Sept. 6, 1994]

§516.5 Restriction on contact with DOJ.

(a) General rule. Except as authorized by TJAG, the General Counsel, the Chief of Litigation Division, or this regulation, no Army personnel will confer or correspond with DOJ concerning legal proceedings in which the Army has an interest.

(b) Exceptions. This prohibition does not preclude contact with DOJ required by the Memorandum of Understanding between DOJ and DOD relating to the investigation and prosecution of certain crimes. (See AR 27-10, para 2-7). In addition, an installation SJA or legal adviser is expected to

maintain a working relationship with the U.S. Attorney in each district within his geographical area. An SJA or legal adviser should request the U.S. Attorney to advise him immediately when litigation involving DA or its personnel is served on the U.S. Attorney.

[59 FR 38236, July 27, 1994; 59 FR 45974, Sept. 6, 1994]

§516.6 Appearance as counsel.

(a) General. Military personnel on active duty and DA civilian personnel will not appear as counsel before any civilian court or in any preliminary proceeding, for example, deposition, in litigation in which the Army has an interest without the prior written approval of TJAG, except under the following conditions:

(1) The appearance is authorized by this regulation.

(2) The individual is a party to the proceeding.

(3) The appearance is authorized under an expanded legal assistance program (See AR 27-3).

(4) The individual is a judge advocate assigned or detailed by TJAG to DOJ to represent the United States in civil or criminal cases, for example, a Special Assistant U.S. Attorney, or an attorney assigned to Litigation Division.

(b) Procedure. All requests for appearance as counsel will be made through Litigation Division to the Personnel, Plans and Training Office, OTJAG. Requests for DA military or civilian attorneys to appear in any civilian court or proceeding on behalf of a soldier who is also facing UCMJ action will be delivered to the SJA, legal adviser, or Regional Defense Counsel, as appropriate. The SJA or legal adviser will forward the request to Litigation Division with an evaluation of the case and recommendation. Regional Defense Counsel should send requests for USATDS counsel to Chief, USATDS, who will forward the request to Litigation Division. Privileged or otherwise sensitive client information should only be submitted through USATDS channels.